

Martin

Service Date: December 15, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF L&B BUSING, INC.,)	TRANSPORTATION DIVISION
A Motor Carrier, PSC No. 8990,)	
Complaint by the Montana Public)	DOCKET NO. T-9933
Service Commission, Concerning)	
Operations Outside of the Scope of)	ORDER NO. 6165
Authority.)	

FINAL ORDER

FINDINGS OF FACT

1. On September 10, 1992 the Montana Public Service Commission (PSC) issued a Notice of Proposed Agency Action against L&B Busing, Inc. (L&B). The action was to consider whether L&B had conducted motor carrier operations in excess of its existing authority and therefore in violation of provisions of Title 69, Chapter 12, MCA.
2. On October 6, 1992 L&B filed its Response to Notice of Proposed Agency Action. The response essentially agreed to all material facts underlying the PSC's proposed action, but questioned whether a proper construction of L&B's certificate actually barred L&B from conducting the kind of operation that it did conduct. L&B tendered an acceptable fine of \$150, contingent on the PSC's final determination of the meaning of L&B's certificate as a matter of law. On November 16, 1992 L&B submitted a brief in support of its position.

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3. L&B is a motor carrier, authorized under Intrastate Certificate of Public Convenience and Necessity, PSC No. 8990, to transport passengers in charter service, Class B, between all points and places in the state of Montana, but with expressed limitation that "transportation is restricted to traffic originating in and returning to Ravalli County, Montana."

4. L&B's motor carrier operation in question occurred in or about March, 1992. At that time L&B, operating solely under its authority in PSC No. 8990, provided a charter service tariffed and paid from Florence, Ravalli County, Montana, to Helena, Lewis and Clark County, Montana, and return. The service was provided to a group known as the Westside Senior Citizen's Bowling League, the members boarding and unboarding as follows: four members in Florence, Ravalli County, Montana; thirty-three members in Missoula, Missoula County, Montana; and six members in Drummond, Granite County, Montana.

CONCLUSIONS OF LAW

5. All findings of fact which properly can be considered as conclusions of law and should be so considered to preserve the integrity of this order are incorporated herein.

6. The PSC has jurisdiction over L&B and this matter pursuant to Title 69, MCA. All procedures and proceedings have been conducted according to law.

7. The sole question is one of law and concerns whether the proper meaning of L&B's expressed limitation that "transport-

tation is restricted to traffic originating in and returning to Ravalli County, Montana" encompasses the above-identified March, 1992, transportation movement by L&B. The key or determinative word in this limitation appears to be the word "traffic."

8. L&B argues that the language in the authority can be construed to permit: (a) "open door" charter service charged from and to Ravalli County, regardless of where passengers board or unboard; (b) "open door" charter service charged from and to Ravalli County so long as some of the chartering party members board and unboard at that county; or (3) "closed door" charter service charged from and to Ravalli County with all charter members boarding and unboarding only at Ravalli County. L&B argues that the correct construction is the second one -- open door service for charter members is authorized so long as some members board and unboard in Ravalli County. The PSC disagrees and determines that the third construction is the correct one for reasons which will be explained.

9. L&B references comments provided to the PSC in an earlier related Petition for Declaratory Ruling (dismissed September 1, 1992, PSC Docket No. T-9904, Order No. 6133) wherein Karst Stage (Karst) commented (August 4, 1992) that "so long as the chartered vehicle does originate and terminate within the designated territory" the integrity of the charter concept is not destroyed when the charter service accommodates a few individuals who, for various reasons, join or separate from the main part of the charter group. Karst suggested that "traffic" is

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the chartered equipment and the main part of the group, that a minority of members of a chartering group be permitted a kind of flexibility, and that L&B's restriction did not contemplate a closed door operation in this context.

10. The PSC is not inclined to speculate on the validity of the points raised by Karst. Even if they are valid, they are not applicable herein. In the transportation movement conducted by L&B the significant "main part" of the group -- 39 of the 43 passengers -- boarded and unboarded outside of Ravalli County. However, informally, there does not appear to be any legal or practical reason for the PSC to either require or prohibit, in a case where one or two members of a chartering group of this size would be accommodated as a courtesy or convenience or necessity, some special arrangements in boarding or unboarding or joining or separating from the main group.

11. L&B comments that "traffic" might allude to "the vehicle" or other actual "means of conveyance" on the highways for the purposes of travel, not the passengers within such. L&B cites to Section 61-1-401, MCA (traffic control statute), to support this definition. L&B argues under this statute that the word "traffic" in L&B's authority limitation is therefore the vehicle -- it is the vehicle that must originate and return to Ravalli County. The PSC neither agrees or disagrees with L&B's interpretation of the cited statute, but would note that there appears to be some argument that "traffic" could also refer to the passengers within a vehicle. However, it makes no differ-

ence in the matter at hand as this cited statutory definition pertaining to traffic control is not, in any reasonable identifiable way, applicable in the context of motor carrier authorities.

12. L&B also comments that if its limitation was to apply to people, the word "traffic" would have been replaced by "passengers" and that the restriction was specifically written not to include that language. The PSC disagrees. Motor carrier authorities have been issued by the PSC for well over half a century. During that time many different commissioners, staff members, applicants, and intervenors have participated in drafting the authorities that exist today. There has never been an effort on the part of these participants to make all of the language used in authorities absolutely unified or universal. Nevertheless, there is, and always has been, a universal overall context governing the meaning of any particular words or phrases used in passenger or property authorities. In L&B's authority, the language "transportation is restricted to traffic originating in and returning to" could have been stated in other ways. It might have even been stated in better ways. However, that is inconsequential. The language itself is neither ambiguous nor unclear on its face, in context of motor carrier regulation.

13. The word "traffic" in the L&B's expressed limitation "transportation is restricted to traffic originating in and returning to" clearly is a shorthand means of referring back to L&B's authorized "charter operations" or "charter services."

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The word "traffic" in L&B's authority has no other meaning than what L&B's authority permits -- "passengers in charter service." Under L&B's authority, the passengers in charter service must originate (passengers board) and return (passengers unboard) to Ravalli County.

14. L&B also comments that the public convenience and necessity requires that its argued interpretation be the one adopted by the Commission. Its comments on this point include that chartering groups are not always geographically cohesive -- there could be small groups of members in several counties, for example. Even if L&B's arguments are sound and would further the public interest, they cannot be upheld here. There is a proper and lawful means to obtain certificates of public convenience and necessity and thereby meet such needs (application for authority), but that proper and lawful means does not include operations outside of existing authority or construction of existing permits so as to permit the meeting of such need.

15. L&B also comments that closed door charters would be put in violation by members deciding to join or separate from the main group at locations other than charter plans allow. L&B states that the carrier providing the charter service would have little control over this. The PSC determines that this is inconsequential to the matter at hand. However, as also stated above, informally, there does not appear to be any legal or practical reason for the PSC to either require or prohibit, in a case where one or two members of a chartering group would be ac-

commodated as a courtesy or convenience or necessity, some special arrangements in boarding or unboarding or joining or separating from the main group.

16. For the above reasons, being fully apprised of all premises, the PSC determines that in the above-identified March, 1992, transportation movement, L&B has operated in excess of its authority. L&B's authority does not include any certificate that the public convenience and necessity require such operations. Operations in excess of authority are in violation of Section 69-12-312(1), MCA, which prohibits the transportation of passengers without first having obtained the proper authority.

ORDER

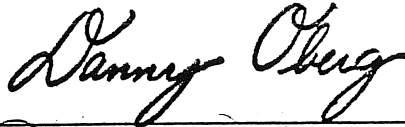
1. All findings of fact and conclusions of law which properly can be considered as an order and should be so considered to preserve the integrity of this order are incorporated herein.

2. IT IS HEREBY ORDERED that L&B Busing, Inc., shall pay a fine of \$150 (already paid, November 2, 1992).

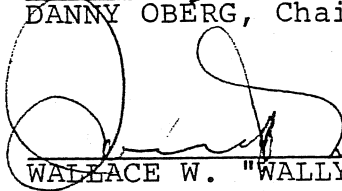
Done and Dated this 10th day of December, 1992 by a vote of 5-0.

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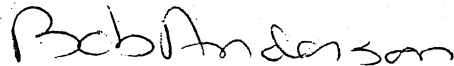
BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION



DANNY OBERG, Chairman



WALLACE W. "WALLY" MERCER, Vice Chairman



BOB ANDERSON, Commissioner



JOHN B. DRISCOLL, Commissioner



TED C. MACY, Commissioner

ATTEST:



Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.